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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

Trevor Kelley, Plaintiff, v. European Tanning <i>d.b.a.</i> European Tan, Defendant.	Case No.: 2:17-cv-00787-JNP-BCW MOTION FOR DEFAULT JUDGMENT AGAINST DEFENDANT EUROPEAN TAN Assigned to: Judge Jill N. Parrish Referred to: Magistrate Judge Brooke C. Wells
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Pursuant to Rule 55(b) of the Federal Rules of Civil Procedure, Plaintiff, Trevor Kelley, by and through undersigned counsel, hereby respectfully submits this Motion for Default Judgment against Defendant European Tanning *d.b.a.* European Tan, and Memorandum in Support.

The grounds for the Motion are fully elaborated in the accompanying Memorandum in Support. The Motion is supported by the Declaration of James K. Ord, III (“Ord Decl.”), attached as Exhibit A, Attorney’s Cost and Fee’s as Exhibit B and Proposed Default Judgment is attached herewith.

MEMORANDUM IN SUPPORT

Mr. Kelley brought this cause of action under the Americans with Disabilities Act (“ADA”). On July 13, 2017, Plaintiff filed the lawsuit against Defendant, European Tanning, pursuant to Title III of the Americans with Disabilities Act 42 U.S.C. § 12182(a), § 12182(b)(2)(iv)

(“ADA”) and implementing regulations. Plaintiff alleged within the Complaint that certain amenities and/or accommodations at Defendant’s public accommodation located at 656 East 11400 South Ste P, Draper, UT 84020. (the “Location”), did not comply with “The 2010 Standards for Accessible Design” within Title III of the ADA. And on July 18, 2017, Defendant, European Tanning *d.b.a.* European Tan, was served with a Summons and Complaint on, as evidence by Plaintiff’s Declaration of Service (Doc. 6) (Ord Decl. ¶ 1). Therefore, Defendant’s responsive pleading was due for filing on July 13, 2017.

As evidence by the Federal Docket in this Case and according to Rule 12 of the Federal Rules of Civil Procedure, Default Defendants were required to file an Answer or otherwise respond to the Complaint by August 8, 2017 and have not done so. Fed. R. Civ. P. 12(a)(1)(A)(i). Defendant has failed to plead or otherwise defend as provided by the Federal Rules of Civil Procedure 55(a).

More than twenty-one (21) days have passed since service of the Summons and Complaint and as such, Plaintiff filed a Motion for Entry of Default against Defendant on March 14, 2018, (Doc. 8). Plaintiff served copies of the Motion for Entry of Default Certificate upon Default Defendants via U.S. Mail. On March 19, 2018, the Clerk of the Court entered a Default Certificate against European Tanning *d.b.a.* European Tan. As of the date of this Motion, Default Defendants have filed no response to the Default Certificate, have not contacted counsel or the Plaintiff since its entry, and have not otherwise responded in any way to the Default Certificate or Complaint. *Id* ¶3.

Thus, as the Clerk has entered a Default Certificate and Default Defendants have been given notice and time to respond to the Complaint but have failed to do so, pursuant to Rule 55(b)

of the Federal Rules of Civil Procedure, Plaintiff is entitled to a default judgment against Default Defendants as detailed below.

SUMMARY OF RELIEF REQUESTED

1. A declaration that Plaintiff has a federally protected right to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of Defendant's PPA, whether alleged in this Complaint or subsequently discovered; and
2. A declaration that at the commencement of this Action that Defendant was in violation of the specific requirements of the ADA described above; and
3. Irrespective of Defendant's "voluntary cessation," if applicable, a preliminary and permanent injunction requiring Defendant to remove all barriers so that Plaintiff shall have the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of Defendant's PPA; and
4. An Order requiring Defendant to alter its PPA that is the subject of this Complaint to make the PPA accessible to and usable by individuals with disabilities to the full extent required by the ADA; and
5. An award of attorneys' fees, including litigation expenses, and costs, pursuant to 42 U.S.C. § 12205, 28 C.F.R. § 36.505, and other principles of law and equity and in compliance with the "prevailing party" and "material alteration" of the parties' relationship doctrines

CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court enter a default judgment in the amount of \$3,150.00, in reimbursement of Plaintiff's attorney's fees including pre- and post-judgment interest at the statutory rate.

RESPECTFULLY submitted this 25th day of September 2018.

/s/ James K. Ord, III
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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of September 2018, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF system for filing and caused a true copy of the foregoing document to be served via U.S Mail upon the following recipients:

European Tanning, Inc.
d.b.a. European Tan
P.O. Box 571557
Salt Lake City, UT 84157
Defendant Pro Se

/s/ Lisa Stamper*

(* I certify that I have the signed original of this document
which is available for inspection during normal business
hours by the Court or a party to this action)